

APPELLATE JURISDICTION (a)

Criminal Regular Appeal No. 116 of 1871.

Ex-parte MAHALINGAIYAN.

A Civil Court has no power to make an order, under Section 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sadr Amin on the Small Cause Side, that Court not being subordinate to the Civil Court.

THIS was a Petition against the sentence of the Court of Session of Salem, in Case No. 23 of the Calendar for 1871.

Sloan, for the appellant, the prisoner.

1871.
May 3.
C. R. A. No.
116 of 1871.

The facts of the case and the arguments of counsel are fully stated in the following

JUDGMENT:—The appellant in this case has been convicted, under Sections 463, 467 and 471 of the Penal Code, of the offences of forging a document purporting to be a bond for Rupees 100, executed by the 1st witness for the prosecution, and fraudulently using the said bond, and it is objected, in the appeal against the validity of the conviction, that the order of the Civil Court of Salem sanctioning the prosecution was insufficient to give jurisdiction to entertain the charges.

The material facts are, that the document was given in evidence in a suit brought upon it on the Small Cause Side of the Principal Sadr Amin's Court of Salem, and that Court considered it to be a forgery and dismissed the suit. Not long afterwards the Principal Sadr Amin's Court was abolished, and the defendant then addressed his petition for leave to institute Criminal Proceedings against the appellant for the forgery to the Civil Court of Salem, and thereupon the order in question was made.

Mr. Sloan, for the appellant, contends that the Principal Sadr Amin exercising Small Cause jurisdiction was not a Court subordinate to the Civil Court, and if this contention is right, the order in question was undoubtedly ineffectual, and the Criminal Proceedings against the appellant are *ab initio* nugatory; for Section 170 of the Code of Criminal Procedure enacts that such charges "shall not be entertained in any Criminal Court, except with the sanction of the Court in which the document was given in evidence, or of some Court to which such Court is subordinate."

(a) Present : Scotland, C. J. and Kindersley, J.

1871.
May 3.
R. A. No.
6 of 1871.

We are of opinion that the objection is a good one. The term 'subordinate' in that Section was intended, we think, to be understood in the sense of subjection to the jurisdiction or control, and in the exercise of the jurisdiction and powers provided for by the Small Cause Courts' Act, No. XI of 1865, those Courts are not in any way made subject to the jurisdiction or control of the Civil Courts. The only existing Court to which they are in this sense subordinate is the High Court (see Section 46 and 53). Then, does it make any difference in this case that the officer who disposed of the suit in the exercise of Small Cause jurisdiction was subordinate to the Civil Court in his judicial capacity of Principal Sadr Amin? We think not. A distinct appointment was necessary to empower him to exercise such jurisdiction, and, when he acted judicially by virtue of that appointment, he did so, in our opinion, for all purposes and in every respect as a Judge of a Court of Small Causes, quite independently of his functions as a Principal Sadr Amin.

This view of the position of Judges of Courts of Small Causes, with reference to the Civil Courts, has been several times recognized and acted upon in Proceedings of this Court, and the recent decision in the case of *Narayana Malya v. Govind Shetty*, 6 M. H. C. Repts., 18, bears directly in support of it.

We are, consequently, of opinion that the objection is fatal to the conviction and sentence, and that they must be annulled and the prisoner set at liberty.

APPELLATE JURISDICTION (a)
Referred Case No. 70 of 1870.
CHENGULVA RÁYA MUDALI
against
THANGAICHI AMMÁL and others.

An action lies in a Small Cause Court for the recovery of costs incurred by the plaintiff in a suit to compel registration of a document.

1871.
May 15.
C No. 70
f 1870.

THIS was a case referred for the opinion of the High Court by S. Narasimhulu Náyudu, the District Munsif of Chingleput, in Suit No. 181 of 1870.

(a) Present: Scotland, C. J., Holloway and Kindsley, J J.